



Comptroller General
of the United States
Washington, D.C. 20548

154082
349204

Decision

Matter of: Energy Compression Research Corporation--
Claim for Costs

File: B-243650.4

Date: April 18, 1995

Nancy O. Dix, Esq., Gray Cary Ware Freidenrich, P.C., for the protester.
Gregory H. Fetkoff, Esq., Department of the Air Force, for the agency.
Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Claim for costs is denied where protester failed to file an adequately detailed claim with the agency within 60 working days after protester received a copy of a decision awarding proposal preparation costs and protest costs.

DECISION

Energy Compression Research Corporation (ECR) requests that we determine the amount it is entitled to recover from the Department of the Air Force for its proposal preparation and protest costs as the result of our decision sustaining its protest against the award of a contract to Kaman Sciences Corporation. Energy Compression Research Corp., B-243650.2, Nov. 18, 1991, 91-2 CPD ¶ 466; aff'd on recon., B-243650.3, May 11, 1992, 92-1 CPD ¶ 432.

We deny the claim.

Following its receipt of our November 18, 1991, decision on January 8, 1992, ECR filed a claim with the Air Force which was returned because it was not sufficiently detailed. Likewise, another claim dated February 6, 1992, was rejected for the same reason. Subsequently, ECR submitted additional information and the parties conducted settlement negotiations which lasted through June 1992.

While ECR asserts that a settlement agreement in the amount of \$143,909 was reached on June 30, the Air Force disputes this assertion and denies that any agreement was ever reached. The record shows that additional correspondence continued between the parties in late 1992 and, on

December 29 of that year, the Air Force offered ECR \$1,460.15 in full settlement of its claim. ECR rejected this offer on January 20, 1993.

ECR did not contact the Air Force again until February 25, 1994, when its counsel demanded \$143,909 pursuant to the alleged agreement of June 30, 1992. The agency denied this claim on March 16, and again in a "final letter" dated March 28, 1994. In this correspondence, the Air Force rejected ECR's claim in its entirety stating that the firm had forfeited its right to entitlement by not filing a sufficiently detailed initial claim within 60 working days after its receipt of our November 18, 1991, decision, as required by our Bid Protest Regulations, 4 C.F.R. § 21.6(f)(1) (1995). (The parties agree that the relevant deadline in this case was February 24, 1992.)

ECR filed this claim with our Office on August 25, 1994-- 5 months after its receipt of the "final" correspondence from the Air Force. ECR disputes the Air Force's determination that its initial claim was not timely filed and in its pleadings to our Office claims that it is entitled to \$153,000 from the Air Force.

As alluded to above, our Bid Protest Regulations provide that when we find that an agency should reimburse a protester for proposal preparation and protest costs:

"[t]he protester shall file its claim for costs, detailing and certifying the time expended and the costs incurred, with the contracting agency within 60 days after receipt of the decision on the protest Failure to file the claim within such time shall result in forfeiture of the protester's right to recover its costs."

Consistent with the intent of our Regulations to have protest matters resolved efficiently and quickly, the 60-day time frame for filing claims with the contracting agency was specifically designed to avoid the piecemeal presentation of claims and to prevent unwarranted delays in resolving such claims. That time frame affords ample opportunity to submit adequately substantiated, certified claims. Test Sys. Assocs., Inc.--Claim for Costs, 72 Comp. Gen. 169 (1993), 93-1 CPD ¶ 351. Failure to initially file an adequately supported claim in a timely manner results in forfeiture of a protester's right to recover costs, irrespective of whether the parties may have continued to negotiate after the 60-day period expired. Id.

Claims for the reimbursement of expenses, at a minimum, must identify the amounts claimed for each individual expense, the purpose for which that expense was incurred, and how the expense relates to the protest. Id. As discussed below, we find that ECR failed to submit a sufficiently detailed claim by February 24, 1992, as required by our Regulations.

ECR concedes that its first claim filed on January 8, 1992, was insufficient. The focus of our inquiry, then, is the firm's claim dated February 6, which is the only other claim document that was filed with the Air Force prior to the deadline.

The February 6 document is broken down into two principal cost categories--proposal preparation costs and protest costs, each with subcategories for labor and materials. The labor subcategories contain a list of names with a date next to each and a total dollar figure (inexplicably headed "Hrs.*Rate") for each entry. The subcategories for materials contain the name of a firm or organization (e.g., Federal Express, U.S. Post Office, Computacopy) with a date next to each and a total dollar figure next to each entry; the costs of materials, individual consultants, firms, and lawyers used in pursuit of the protest are similarly listed with a date and a total dollar figure next to each entry. No further explanation is provided in the document.

As indicated above, claims which do not, as here, identify the purpose for which an expense was incurred, and how the expense relates to the protest, are not adequate. Test Sys. Assocs., Inc.--Claim for Costs, supra. In its final submission to this Office in this matter, ECR appears to recognize that its February 6 "claim" fails to meet this test¹, but argues that we should not apply the Test Systems standard because the decision was not issued until well after this claim was filed with the Air Force. However, this position fails to recognize that the same standard had already been used in our decisions for a number of years. See, e.g., TMC, Inc.--Claim for Costs, 69 Comp. Gen. 199 (1990), 90-1 CPD ¶ 111. Accordingly, ECR failed to submit a legally sufficient cost claim within the required time.

¹ECR also argues that, on February 19, the firm provided the Defense Contract Audit Agency (DCAA) access to its records as part of an initial audit of the claim and that DCAA found "no inconsistency in the costs submitted by ECR." There is no indication in the record, however, that materials reviewed by DCAA contained descriptions of the purpose for which expenses were incurred and how individual expenses related to the protest.

ECR also requests that we consider its claim under the "good cause" exception to 4 C.F.R. § 21.6(f)(1), suggesting that the Air Force unduly delayed in rejecting its claim, thereby precluding the firm from meeting the 60-day deadline. In order to fall within this exception to our timeliness standards, the record must show that a compelling reason beyond the control of the protester prevented further pursuit of the claim. Continental Maritime of San Diego, Inc.--Claim for Cost, 73 Comp. Gen. 53 (1993), 93-2 CPD ¶ 323. The record here shows that the Air Force responded to ECR's February 6 submission on February 18. We do not find that this response time was inordinate. Moreover, we note that the principal deficiency in the February 6 claim was that the purpose of the claimed expenses and their relationship to the protest were not identified even though one would reasonably expect that ECR knew this information when it prepared the summary lists that constituted the claim which was rejected.

The claim is denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel